

Blouberg Municipality



CHAPTER 22: LEGAL AID POLICY

1. PREAMBLE

All Municipality staff members and councillors will be provided with legal aid in instances where their official acts or omissions become the basis for legal action against them.

2. PURPOSE

The policy aims to provide standard framework for providing legal aid to staff members and councillors where they act on behalf of the Municipality to ensure appropriate protection under the law.

3. SCOPE OF APPLICATION

This policy applies to all staff members and councillors of the Municipality.

4. LEGISLATIVE AND POLICY FRAMEWORK

- Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996)
- Municipal Systems Act, 2000 (Act No. 32 of 2000)
- Municipal Structures Act, 1998 (Act No. 117 of 1998)
- Municipal Finance Management Act, 2003 (Act No. 56 of 2003)
- Labour Relations Act, 1995 (Act No. 66 of 1995)
- South African Local Government Bargaining Council: Collective Agreements
- Inquests Act, 1959 (Act No. 58 of 1959)

5. DEFINITIONS

All terminology used in this policy shall bear the same meaning as in the Regulations or applicable legislation, or as defined and / or explained in the Glossary of Terminology in the Human Resources Policies Manual.

6. PROBLEM STATEMENT

A councillor or municipal staff's actions while performing their duties within the scope of their work on behalf of the municipality may result in a lawsuit or any legal action taken by external parties.

7. POLICY PROVISIONS

The Municipality shall provide a councillor or staff member with legal representation arising out of institution of legal action against them as a result of any act or omission by them in the exercise of their powers or the performance of their duties, as follows:

7.1 Legal action against councillor or staff member

Whenever a claim is made or legal proceedings are instituted against any councillor or staff member of the council arising out of any act or thing done or omitted by them in the exercise of their powers or the performance of their duties and functions, or whenever any such councillor or staff member as a consequence of their election as a councillor or employment with a Council are compelled to give evidence in or to make a written statement for the purpose of an inquest, the Council:

7.1.1 shall, in the case of a civil claim or civil proceedings, if it is of the opinion that the councillor or staff member concerned acted in good faith and without negligence, indemnify them in respect of such claim or proceedings, and –

- (a) shall provide for the legal representation of such councillor or staff member at the cost of the council or undertake to pay their legal costs;
- (b) shall pay any award by a court against them; and
- (c) may settle the claim and pay any amount due in terms of such settlement.

7.1.2 shall, in the case of criminal proceedings, if it is of opinion that the councillor or staff member concerned acted in good faith and without negligence, indemnify them in respect of their legal costs therein or provide for their legal representation at the cost of the council; and

7.1.3 may, in the case of criminal proceedings or an inquest, if it is the opinion that it is in the interests of the council to do so, indemnify the councillor or staff member in respect of their legal costs therein or provide for their legal representation at council's cost;

7.1.4 provided that the council may refuse to act in accordance with the foregoing provisions or may terminate any steps already taken by it and recover from the councillor or staff member concerned any costs incurred by it on their behalf, if such councillor or staff member –

- (a) has made any admission or statement which the council considers to be prejudicial to a successful defence;

- (b) has made any offer of payment or settlement;
- (c) declines to accept the services of a legal representative nominated by council;
- (d) fails or refuses to furnish such information as the council may require or furnishes false or misleading information; or
- (e) fails or refuses to co-operate with the council or to render such assistance as may be required by the council.

7.2 Legal action by councillor or staff member

Whenever any claim is or is proposed to be made or legal proceedings are or are to be instituted by any councillor or staff member of a council against any person in consequence of any act or thing done or omitted by such person and the council is of the opinion that –

- 7.2.1** such act or thing was done or omitted in relation to or in consequence of the exercise and performance by such councillor or staff member of his / her powers, duties and functions;
- 7.2.2** such councillor or staff member exercised and performed such powers, duties and functions in good faith and without negligence; and
- 7.2.3** such claim or proceedings has or have a reasonable prospect of success, the council may indemnify such councillor or staff member against all legal costs (including such councillor or staff member's own legal costs) which may be or become payable by them in the event of such claim or proceedings not being successful; provided that the council may withdraw any such indemnity and recover all payments made in terms thereof from such councillor or staff member if they –
 - (a) took any action or did anything which in the opinion of the council is prejudicial to the success of such claim or proceeding;
 - (b) failed or refused to furnish such information as the council may require or furnished false information; or
 - (c) failed or refused to co-operate with the council or render such assistance as may be required by the council.

7.3 Refusal to grant legal aid

Notwithstanding anything to the contrary contained herein, the Council shall refuse to grant legal aid to a councillor or staff member in any action resulting from an act or omission which constitutes or would constitute an infringement of the Codes of Conduct for Councillors and Municipal Staff members contained in the Municipal Systems Act and Regulations.

7.4 Roles and responsibilities

7.4.1 The Municipal Manager or his / her delegated assignee(s) accept overall responsibility for the implementation and monitoring of the policy.

7.4.2 The financial implications related to implementing this policy shall be qualified and quantified by Human Resource Management in consultation with the Chief Financial Officer.

8. POLICY MONITORING AND EVALUATION

8.1 This policy shall be implemented and effective once recommended by the Local Labour Forum and approved by Council.

8.2 Non-compliance to the stipulations contained in this policy shall be regarded as breach of Code of Conduct, which shall be dealt with in terms of the Code of Conduct.

8.3 Head of Corporate Services shall carry out the monitoring and evaluation of the policy's implementation.

9. POLICY APPROVAL

This policy was formulated by HR Management in consultation with the Local Labour Forum.


Authorised by Municipal Manager:

Signature:  Date: 30/07/2024

**Recommended by Portfolio Committee
on Corporate Services:**

Signature:  Date: 30/07/2024

Approved by Municipal Council:

Signature:  Date: 30/07/2024